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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/091,602	04/19/1999	JOACHIM BUNGER	BEIERSDORF50	5123

7590 03/01/2004

NORRIS, MCLAUGHLIN & MARCUS, P.A.
220 EAST 42ND STREET
NEW YORK, NY 10017

EXAMINER

TRAVERS, RUSSELL S

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/091,602

Applicant(s)

BUNGER ET AL.

Examiner

Russell Travers, J.D., Ph.D

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

The amendment filed November 18, 2003 has been received and entered into the file.

Claims 11-20 are presented for examination.

Examiner notes the amendment filed November 18, 2003 contains two claims numbered "15", thus, the second appearing claims numbered "15" has been renumbered as claim "16". As a result each subsequent claim will be renumbered the next higher number (i.e. old 16 is now 17 and old 17 is now 18.....).

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

Claims 11-20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for several commercial surfactants, does not reasonably provide enablement for those compounds set forth in the instant claims. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

Attention is directed to specification pages 12-20 disclosing various alkyl monosaccharide and alkylpolysaccharide compounds useful for practicing the invention as envisioned. Save the disclosure of "plantarene 1200" and "Oramix NS", trade names for various compounds, the specification is silent with regard to the synthesis or source for those compounds suitable to practice the invention as claimed. Examiner notes a Trademark is not a specific compound, but simply the designation of a source of that product. Thus, a trademark would not serve to enable a claim in an issued U.S. Patent.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-12, 15-16 and 18-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Thornfeldt.

Attention is directed to Thornfeldt, page 2 teaching acne therapy with those compounds herein envisioned. At page 4, Thornfeldt teaches seborrheic dermatitis therapy with those compounds herein envisioned (see claims 6 and 9 for compounds).

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed

invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 11-12, 14-16, and 18-20 are rejected under 35 U.S.C. § 103 as being unpatentable over Thornfeldt.

Thornfeldt teaches the claimed alkylated oligosaccharides as old and well known in combination with various pharmaceutical carriers and excipients in a dermal dosage form (see page 6, lines 15-16). These medicaments are taught as useful for treating acne (page 2) with those compounds herein envisioned, and seborrheic dermatitis therapy (see page 4, paragraph 2) with those compounds herein envisioned (see claims 6 and 9 for compounds). Claims 11-12, 14-16 and 18-20, and the primary reference, differ not at all

Claims 13 and 17 are rejected under 35 U.S.C. § 103 as being unpatentable over Thornfeldt as set forth above for claims 11-12, 14-16, and 18-20, in view of Matsumura et al U and Matsumura et al V.

Thornfeldt teaches the claimed alkylated oligosaccharides as old and well known in combination with various pharmaceutical carriers and excipients in a dermal dosage form (see page 6, lines 15-16). These medicaments are taught as useful for treating acne (page 2) with those compounds herein envisioned, and seborrheic dermatitis therapy (see page 4, paragraph 2) with those compounds herein envisioned (see claims 6 and 9 for compounds). Claims 13 and 17, and the primary reference, differ as:

- 1) failing to teach the alkyl monosaccharides as useful for treating acne

As stated above Thornfeldt teaches topical antibiotics as useful for treating acne. Additionally, Thornfeldt teaches antibiotics by dermal application as generally useful for treating acne (see page 2, lines 17-34). These antibiotics envisioned by Thornfeldt are alkyl saccharides as set forth by Thornfeldt (see page 5, lines 17-34), Matsumura et al U (table 5) and Matsumura et al V (table 4). Possessing the Thornfeldt teaching of anti-acne activity residing in alkyl sacchride antibiotics and Matsumura et al U and Matsumura et al V teaching alkyl saccharide compounds as broadly antibiotic; the skilled artisan would have been motivated to employ the compounds of Matsumura et al U and Matsumura et al V to treat acne and have enjoyed a reasonable expectation of therapeutic success.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell Travers, J.D., Ph.D whose telephone number is 703-308-4603. The examiner can normally be reached on Monday to Thursday from 7:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

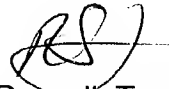
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'RSJ', is positioned above the printed name.

Russell Travers, J.D., Ph.D
Primary Examiner
Art Unit 1617